

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO No. 10515 of 2014 (O&M)

Date of Decision: 11.10.2017

United India Insurance Company Limited

.....Appellant

Versus

Raj Kumari and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Paul S. Saini, Advocate
for the appellant.

Mr. Rajinder Goyal, Advocate
for respondents No. 1 to 3.

AVNEESH JHINGAN, J.

The present appeal has been filed against the award dated 8.9.2014 passed by the Motor Accidents Claims Tribunal, Kaithal (for short 'the Tribunal').

The brief facts necessary for adjudication of the present appeal are as under:

On 2.4.2012, Ranbir Singh, aged 46 years, who was going on his motor cycle was struck by a Maruti Car bearing registration No. HR-05-N-8035 (for short 'the offending vehicle'). As a result of the accident, he suffered multiple injuries and ultimately succumbed to injuries.

The claim petition under Section 163-A of the Motor Vehicles Act (for short 'the Act') was filed by the widow and two major children of the deceased.

The Tribunal awarded a sum of ₹ 5,82,000/- alongwith interest at the rate of 7.5% per annum. The said amount included treatment

expenditure of ₹ 15,000/-, Funeral expenses of ₹ 2000/- and lost of consortium of ₹ 5000/-.

Aggrieved of the said award, the present appeal has been filed by the Insurance Company.

Learned counsel for the appellant raises three fold submissions, firstly that the offending vehicle was not involved in the accident; secondly it has been argued that the respondents No. 1 to 3 (claimants) themselves claimed in the claim petition that the deceased was earning ₹ 3200/- per month, therefore, the Tribunal erred in relying upon the evidence that he was earning ₹ 3,60,000/- per annum. It has been further contended that if the income was more than ₹ 40,000/- per month, the claim petition under section 163-A of the Act could not have been filed; and thirdly, it is argued that the deceased was 46 years of age, therefore, a multiplier of 13 should have been applied instead of 14.

Learned counsel for the respondents No. 1 to 3 argued that the claim petition was filed under section 163-A of the Act, therefore, there was no requirement to prove rash and negligent driving of the offending vehicle. Learned counsel conceded that he has no objection if the dependency compensation is re-calculated taking the monthly income as ₹ 3200/- per month as claimed in the petition. Learned counsel contended that loss of estate not granted by the Tribunal and same should be granted while re-calculating the compensation. Learned counsel contended that dependency compensation be paid as per provision of Schedule-II of the Act. He states that calculation has not been made as per Schedule-II of the Act.

I have heard learned counsel for the parties and perused the paper book and the record.

The contention raised by learned counsel for the appellant that the offending vehicle was not involved in the accident has no substance and is liable to be rejected. There was no such issue framed by the Tribunal meaning thereby that no such issue was pressed before the Tribunal. A perusal of the written statement filed by respondents No. 1 and 2 will show an admission on their part that the said vehicle was involved in the accident. It was pleaded that the said vehicle was not involved but in the same breath it was stated that the accident took place with the vehicle on account of fault of the deceased as he was going on the wrong side of the road. The second plea taken by respondents No.1 and 2 is the admission of involvement of the offending vehicle in the accident.

One of the main ground pressed by learned counsel for the Insurance Company is that there was collusion between parties as the deceased, owner and driver of the offending vehicle belong to same village. The law is well settled that the person who alleges collusion has to prove it. Merely that there was co-incidence that the deceased and owner of the offending vehicle were from the same village, in itself will not prove collusion. The said allegation has not been substantiated. On mere bald statement, the allegation of collusion cannot be accepted.

Further in order to press his argument, learned counsel relied upon contents of DDR. It was argued that in the DDR it was mentioned that the accident occurred due to sudden appearance of antelope (Nilgai) and nobody was at fault. He stated that there is contradiction between the contents of the DDR and the claim petition, hence, it cannot be concluded that the offending vehicle was involved in the accident. This plea raised can also not be accepted, for the reasons that DDR record was never summoned

before the Tribunal. PW5 brother of the deceased specifically deposed that DDR was not recorded at his instance. This itself puts the reliability of DDR in doubt. Apart from the reasons mentioned above, the involvement of the vehicle cannot be doubted as two eye-witnesses were produced before the Tribunal. The Insurance Company was not able to raise any serious objection regarding deposition of these two eye-witnesses. In such circumstances, only conclusion is that the offending vehicle was involved in the accident.

With regard to the contention that the Tribunal could not have considered the monthly income of deceased more than Rs.3200/- per month as the claim in the claim petition and the contention that multiplier of 13 should have been applied as the deceased was 46 years of age, deserves acceptance in view of Schedule -II of the Act. Even learned counsel for respondents No. 1 to 3 could not raise any serious objection with regard to this contention.

The dependency compensation is re-calculated taking the income of the deceased as ₹ 3200/- as claimed in the claim petition and by applying a multiplier of 13, as has been held by Hon'ble the Apex Court in *Smt. Sarla Verma and others vs. Delhi Transport Corporation and another, (2009) 6 SCC 121.*

$$3200 \times 12 \times 13 = 4,99,220/-$$

$$1/3^{\text{rd}} \text{ deduction Rs. } 1,66,400/-$$

$$4,99,220 - 1,66,400 = 3,32,800/-$$

Apart from the loss of dependency re-calculated above, the amount already awarded by the tribunal of treatment expenditure, funeral expenses and loss of consortium of ₹ 22,000/- is kept as it is. Further an

amount of ₹ 2500/- as per Schedule-II of the Act, is awarded for loss of estate.

The award dated 8.9.2014 is modified to the extent that amount awarded of ₹ 5,82,000/- is reduced to ₹ 3,57,300/-.

The claimants shall be entitled to amount now awarded along with interest as awarded by the Tribunal.

The appeal is partly allowed in the aforesaid terms.

In case, the entire amount has been paid, the excess amount paid to the claimants may be refunded to the Insurance Company.

11.10.2017
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(AVNEESH JHINGAN)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable:

Yes/No